

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Norman A. Kangas,  
Petitioner

v.

REPORT AND  
RECOMMENDATION

Independent School District, No. 11,  
Respondent

The above-entitled matter came before Administrative Law Judge Jane A. McPeak on a Motion for Summary Judgment filed by letter by Independent School District No. 11 (Respondent) on February 28, 1996. Respondent then file a Memorandum in Support of Motion for Summary Disposition on April 23, 1996. On April 19, 1996 Norman A. Kangas (Petitioner) filed a Memorandum in Opposition to Summary Judgment on the issue of whether he was removed from his job in violation of Minn. Stat. Section 197.46. By agreement of the parties, Petitioner was given leave to file a Memorandum in Opposition to Summary Judgment based on the issue of subject matter jurisdiction of the Commissioner of Veterans Affairs. On May 7, 1996 Petitioner filed a Memorandum in Support of Petitioner's Motion for Summary Judgment and in Opposition to Respondent's Motion for Summary Judgment and Dismissal. However, Petitioner did not file a Motion for Summary Judgment.

Lawrence R. Altman, Attorney at Law, 900 Lumber Exchange Building, 10 South Fifth Street, Minneapolis, Minnesota 55402 represented Petitioner. Paul H. Cady, District Legal Counsel, Educational Service Center, 11299 Hanson Boulevard NW, Coon Rapids, Minnesota 55433-3799 represented Respondent.

Notice is hereby given that, pursuant to Minn. Stat. Section 14.61 the final decision of the Commissioner of Veterans Affairs shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Bernie Melter, Commissioner of Veterans Affairs, Veterans Service Building, 20 West Twelfth Street, Saint Paul, Minnesota 55155-2079, telephone number (612) 297-5828.

### STATEMENT OF ISSUE

The issues presented by Respondent's Motion for Summary Judgment are as follows:

1. Whether Respondent is entitled to Summary Judgment that the Commissioner of Veterans Affairs lacks subject matter jurisdiction.
2. Whether Respondent is entitled to Summary Judgment that its action did not constitute removal of Petitioner in violation of Minn. Stat. Section 197.46.

Based upon the record herein, the Administrative Law Judge makes the following

### FINDINGS OF FACT

1. The parties have stipulated that Petitioner received notice from Respondent of his Veterans Preference Rights pursuant to Minn. Stat. Section 197.46 by written memorandum dated November 10, 1995.
2. The parties have stipulated that on January 2, 1996 Petitioner personally served on Respondent a written request for a Veterans Preference Hearing.
3. The parties have stipulated that on or about January 2, 1996 Respondent requested Petitioner to provide the name of his representative to be appointed to the three person board to be formed pursuant to Minn. Stat. Section 197.46.
4. The parties have stipulated that on January 8, 1996 Petitioner petitioned the Department of Veterans Affairs for relief on the basis that his removal constituted a demotion in violation of Minn. Stat. Section 197.46.

### CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Department of Veterans Affairs do not have jurisdiction in this matter pursuant to Minn. Stat. Sections 197.481 and 14.50 (1990).
2. Respondent is entitled to Summary Judgment as a matter of law.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs issue an order dismissing the Order for Hearing without Prejudice.

Dated this \_\_\_\_\_ day of May 1996.

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JANE A. MCPEAK  
Administrative Law Judge

### NOTICE

Pursuant to Minn. Stat. Section 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

### MEMORANDUM OF LAW

This matter came before the Administrative Law Judge on a Motion for Summary Judgment by Independent School District No. 11 (hereinafter Respondent). The Motion for Summary Judgment was based upon Respondent's contention (1) that because Respondent offered and continues to offer Petitioner a hearing, the Commissioner of Veterans Affairs does not have subject matter jurisdiction under Minn. Stat. Section 197.46 and (2) in the alternative that changes in Petitioner's job title, reassignment of supervisory duties, and change in location of physical work space do not constitute removal within the meaning of Minn. Stat. Section 197.46.

Summary judgment is proper when there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.02, Minn R. 1400.6600 (1993). A material fact is one which is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact. Highland Chateau v. Minn. Dept. of Public Welfare, 356 N.W. 2d 804 (Minn. App. 1984).

Having considered all applicable statutes, rules, and case law and the memoranda both in support and in opposition to the Motion for Summary Judgment as well as all of the attachments thereto, the Administrative Law Judge believes that the Respondent has demonstrated that there exist no genuine issues of fact and that Respondent is entitled to summary judgment as a matter of law.

Minn. Stat. Section 197.46 provides in relevant part that:

No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

The right which this statutory provision creates is that of entitlement to a hearing. Additionally Section 197.46 provides for application for Writ of Mandamus to enforce this right if it is denied, sets forth the requirements of the employer to provide written notice of such right to a hearing, of the veteran to request in writing a hearing, and of the composition of the hearing board, and the appeal rights of the veteran.

In the event that a veteran is not given notice of the right to a hearing and/or denied a hearing upon written request, Minn. Stat. Section 197.481 provides an alternative to the application for Writ of Mandamus. Section 197.481 allows the veteran to petition the Commissioner of Veterans Affairs for an Order directing the employer to grant such relief as the Commissioner finds justified by the statutes.

Veterans then may enforce their rights to notice and a hearing under the Veterans Preference act by either petitioning for a Writ of Mandamus pursuant to section 197.46 or by requesting an order from the Commissioner of Veterans Affairs pursuant to section 197.481. Young v. City of Duluth, 386 N.W. 2d 732, 737 (Minn 1986)

Both Petitioner and Respondent have stipulated that Petitioner received notice from Respondent of his Veterans Preference Rights pursuant to Minn. Stat. Section 197.46 by written memorandum dated November 10, 1995, that on January 2, 1996 Petitioner personally served on Respondent a written request for a Veterans Preference Hearing, and that on or about January 2, 1996 Respondent requested Petitioner to provide the name of his representative to be appointed to the three person board to be formed pursuant to Minn. Stat. Section 197.46.

Respondent has fulfilled its duty to provide notice of the right to a hearing upon written request. Accordingly, Respondent is entitled to summary judgment as a matter of law.

Since Respondent is entitled to Summary Judgment on the issue of the lack of subject matter jurisdiction by the Commissioner, Respondent's Motion for Summary Judgment that changes in the Petitioner's job title, reassignment of supervisory duties, and change in location of physical work space did not constitute a removal within the meaning of Minn. Stat. Section 197.46 need not be reached.